

**DRAFT - April 20, 2009**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of: )  
 )  
Petition for Rulemaking and Request for )  
Declaratory Ruling Filed by The Coalition ) MB Docket No. 09-23  
United to Terminate Financial Abuses of )  
the Television Transition )  
 )  
 )

**COMMENTS OF THE  
ADVANCED TELEVISION SYSTEMS COMMITTEE, INC.**

Advanced Television Systems Committee, Inc.



Mark S. Richer  
President

W. Scott Petty  
King & Spalding LLP  
1180 Peachtree Street, NE  
Atlanta, GA 30309  
404.572.4600  
*Of Counsel to Advanced Television Systems Committee, Inc.*  
April 27, 2009

The Advanced Television Systems Committee, Inc. (“ATSC”) submits these comments to the Federal Communications Commission (“FCC” or “Commission”) for consideration in connection with the above-referenced docket.<sup>1</sup>

## **1. Introduction and Summary.**

The Commission has invited interested parties to comment on The Coalition United to Terminate Financial Abuses of the Television Transition, LLC’s petition for rulemaking and request for declaratory ruling (the “Petition”). ATSC is an interested party as a result of its key role in the development and documentation of, as well as revisions to the specification adopted by the Commission for digital television broadcasts (the “ATSC DTV Standard”) and a series of important related DTV standards.

The ATSC is 26-year-old international, non-profit organization developing voluntary standards for advanced television systems. The ATSC’s well-established Patent Policy, which is provided as Exhibit A to these comments, governs use of essential patent claims for technologies in its standards. The Patent Policy provides for standards development participants with essential patent claims to technologies used in the standards to make their technologies available on a “reasonable and non-discriminatory” basis, commonly referred to as RAND terms. The ATSC Patent Policy applies to all participants involved in development of the ATSC DTV Standard.

The ATSC does not monitor or control any actions taken by parties in the commercialization of technologies relevant to the ATSC DTV Standard, nor does the ATSC participate in the licensing of such technologies. These activities are outside the scope of the ATSC’s charter as an international standards development body. The commercial marketplace -- and not the ATSC -- determines what constitutes RAND terms for the use of technologies relevant to standards created by the ATSC, including the ATSC DTV Standard.

The ATSC believes that commercialization of patented technologies relating to the ATSC DTV Standard should continue to be the subject of business arrangements privately negotiated by

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<sup>1</sup> See FCC Public Notice, *Media Bureau Action, Petition for Rulemaking and Request for Declaratory Ruling Filed by The Coalition United to Terminate Financial Abuses of the Television Transition, LLC*, MB Docket No. 09-23, DA 09-439 (Feb. 25, 2009).

parties on a case-by-case basis. The industry may create patent pools to aggregate essential claims into a package to simplify licensing. Ultimately, disputes regarding RAND terms and related licensing issues can be resolved by arbitration or legal action through the courts.

Government regulation of licensing terms would have a detrimental effect on our efforts to create industry standards that enable technology innovations to be introduced into the marketplace.

## **2. Background.**

The ATSC is a non-profit organization that is chartered to explore the need for and, where appropriate, to coordinate development, implementation and promotion of voluntary technical standards for advanced television systems. Advanced television systems comprise technologies for the generation, distribution and reception of digital television, including standard-definition television, high-definition television, and data services. ATSC member organizations represent the broadcast, broadcast equipment, motion picture, consumer electronics, computer, cable, satellite, and semiconductor industries.<sup>2</sup>

## **3. ATSC's Patent Policy.**

The ATSC believes that essential patent claims included in its standards should be disclosed and made available to implementers under RAND terms. Consistent with this belief, the ATSC's long-standing Patent Policy governs the use of essential patent claims for technologies in its standards. ATSC members agree to comply with terms of the Patent Policy upon joining the ATSC. Non-member participants in our standards development work are also obligated to comply with the Patent Policy.

The Patent Policy requires participants in our standards development process to disclose essential patent claims for technologies used in standards and to make these technologies

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<sup>2</sup> Additional information about ATSC and its members is available at <http://www.atsc.org>.

available on a RAND basis.<sup>3</sup> In this regard, the ATSC's Patent Policy is consistent with patent policies adopted by other technology standards development organizations. Participants identify essential patent claims in patent statements filed with the ATSC. The ATSC provides the public with access to these patent statements by publishing the statements at its Web site.<sup>4</sup>

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<sup>3</sup> "It is the policy of the Advanced Television Systems Committee, Inc. (ATSC) that Essential Claims included in ATSC Specification Documents be available to implementers on reasonable and non-discriminatory terms." *See* ATSC Patent Policy, published at <http://www.atsc.org>.

<sup>4</sup> *See* Patent Statements, published at <http://www.atsc.org>.

**4. ATSC is Not Involved in Licensing Technologies of the ATSC DTV Standard.**

Consistent with its Articles of Incorporation and Bylaws, the ATSC focuses on the development, implementation and promotion of technical standards in the field of advanced television systems.<sup>5</sup> Commercial transactions involving the licensing of essential patent claims for standards created by the ATSC, including the ATSC DTV Standard, fall outside the range of ATSC's authorized business operations.

The ATSC is not (and has not been) engaged in any of the following activities in connection with licensing of essential patent claims under the ATSC DTV Standard:

- i. Participating in or supervising license negotiations between holders of essential patent claims for the ATSC DTV Standard and potential licensees.
- ii. Policing or enforcing licenses involving an essential patent claim for the ATSC DTV Standard.
- iii. Monitoring the commercial actions taken by a patent holder or licensee under licenses for technologies covered by essential patent claims under the ATSC DTV Standard.
- iv. Participating as a party to any license involving an essential patent claim for the ATSC DTV Standard.

**5. ATSC Does Not Determine What Constitutes RAND Terms for Licenses of the ATSC DTV Standard.**

The ATSC does not make any determination of what constitutes RAND terms for the licensing of any technologies used in the ATSC DTV Standard. The commercialization of patented technologies relating to the ATSC DTV Standard is and should be the subject of business arrangements negotiated by parties on a case-by-case basis. Commercial market members -- and not the ATSC -- are in the best position to determine what constitutes RAND terms for use of technologies relevant to standards created by the ATSC. Conventional legal remedies are available to resolve any RAND term disputes that may arise under such business arrangements.

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<sup>5</sup> See Articles of Incorporation and Bylaws, published at <http://www.atsc.org>.

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**6. The Commission Should Refrain From Regulating Licensing Terms.**

One of the many benefits of digital television is the ability to enhance and expand the functionality of the technology. This ongoing evolution will make it possible for broadcasters to provide new services to the public. The ATSC's current effort to develop an industry standard for digital television broadcasting to mobile and handheld devices is a prime example of our ability to introduce new capabilities into the suite of ATSC standards. The ATSC believes that government regulation of licensing terms would have a detrimental effect on our efforts to create industry standards that enable technology innovations to be introduced into the marketplace.

**7. Conclusions.**

The ATSC is gravely concerned that a proposal to regulate licensing terms under the ATSC DTV Standard, if adopted by the Commission in response to the Petition, would stifle innovation and discourage members of the advanced television systems industry from participating in the creation of new technology standards. Today's market-driven licensing model -- where license terms are determined by parties in the context of negotiated business arrangements -- provides an economic incentive for industry members to invest in research and development and to create new inventions. These innovations serve as catalysts for industry members to participate in technology standards development activities and to update existing standards or create new standards. The ATSC strongly believes that encouraging the continual evolution of standards is essential for the advancement of DTV Technology that will benefit industry members and consumers alike.

For additional information or assistance, please contact me at 202 872-9160 or  
mricher@atsc.org.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Mark Richer", written over a light-colored rectangular background.

Mark S. Richer  
President

Advanced Television Systems Committee, Inc.  
1776 K Street, NW  
Suite 200  
Washington, DC  
20006-2304

W. Scott Petty  
King & Spalding LLP  
1180 Peachtree Street, NE  
Atlanta, GA 30309  
404.572.4600  
*Of Counsel*

April 27, 2009

## **EXHIBIT A**

Doc. B/04

31 Jan 02

6 Dec 04

13 Mar 06

10OCT07

Formerly Doc. E/21

2 July 1986

1 Dec 1986

### **ADVANCED TELEVISION SYSTEMS COMMITTEE, Inc.**

#### **Patent Policy**

1. **Inclusion of Patents in Specification Documents.** There is no objection in principle to drafting a Specification Document in terms that include the use of an Essential Claim, if it is considered that technical reasons justify this approach. It shall be the policy of the Advanced Television Systems Committee, Inc. (ATSC) that Essential Claims included in ATSC Specification Documents be available to implementers on reasonable and non-discriminatory terms. Prior to a vote on a Specification Document subject to a disclosed Essential Claim and no later than the time frames specified in Section 5, the ATSC shall receive from the person or entity that holds the Essential Claim written confirmation (using the attached form) that:
  - a. A license to the Essential Claim will be made available upon request without compensation to all applicants for the purpose of implementing the Specification Document, which license may be conditioned upon license reciprocity with respect to the same Specification Document; or
  - b. A license to the Essential Claim will be made available upon request under reasonable and nondiscriminatory terms and conditions to all applicants for the purpose of implementing the Specification Document, which conditions may include license reciprocity with respect to the same Specification Document; or
  - c. A license to the Essential Claim will not be provided under reasonable and nondiscriminatory terms and conditions to applicants for the purpose of implementing the Specification Document.

This written confirmation shall be submitted to the President of the ATSC for review and retained in the ATSC's files. After issuance of the ATSC DTV Standard or Recommended Practice, the ATSC shall make the written confirmations available to Members, Observers and third parties upon request.

If a Participant submits a statement under Section 1(c), the technology group considering the Specification Document to which such Essential Claim pertains shall consider whether alternatives to including such Essential Claim are feasible. If there are no feasible alternatives, and the technology group considers that a Specification Document incorporating an Essential Claim identified by a statement under Section



1(c) is in the interests of the Membership, application shall be made to the ATSC Board of Directors for an exception to this policy. The application shall include all information supplied by the Participant, and reasons that an exception should be made. If the Board approves, work on the Specification Document may continue, but when the Specification Document is balloted to the ATSC Membership for approval, the ballot shall include information on the policy exception and the reasons for approval.

2. **Notice of Essential Claims upon a Standard or Recommended Practice.** When the ATSC receives a written confirmation as set forth in Section 1 with respect to a Proposed Standard or a Proposed Recommended Practice that becomes part of an ATSC DTV Standard or ATSC Recommended Practice, the resulting document shall include a notice as follows:

NOTE: The user's attention is called to the possibility that compliance with this standard may require use of an invention covered by patent rights. By publication of this standard, no position is taken with respect to the validity of this claim or of any patent rights in connection therewith. One or more patent holders have, however, filed a statement regarding the terms on which such patent holder(s) may be willing to grant a license under these rights to individuals or entities desiring to obtain such a license. Details may be obtained from the ATSC Secretary and the patent holder.

3. **Disclosure of Patents.** A Participant shall disclose in writing, using the attached form, the existence of any Potential Claim of which any Representative of the Participant who is active in a technology group or specialist group has actual personal knowledge. No Participant, however, shall be required to disclose the existence of a Potential Claim owned by another entity if such a disclosure would cause that Participant to breach a contractual obligation of confidentiality. A Participant shall deliver any Disclosure Statement to the President of the ATSC. All submitted Disclosure Statements must be maintained in the ATSC's files.
4. **Contents of Patent Disclosures.** Disclosure Statements shall be submitted using the attached form and shall include (a) the name of the Participant making the Disclosure Statement and the name of the Representative responsible for the Disclosure Statement; (b) the name of the person or entity that holds the patent or patent application with the Potential Claim; (c) the patent number or published patent application number, if available, in which the Potential Claim is contained; (d) the Specification Document to which the Disclosure Statement applies; (e) an indication from the Participant that it, in good faith, believes the Potential Claim may be relevant to the implementation of the Specification Document, and (f) the written confirmation required by Section 1, if the Participant making the Disclosure Statement is the holder of the patent or patent application on which the Potential Claim is based. A Participant submitting a statement under Section 1(c) shall supply sufficient

identifying information about the Potential Claim to permit it to be identified within a Specification Document.

5. **Timeframe for Patent Disclosures.** The patent disclosure obligation is an ongoing obligation that begins with participation by a Participant's Representative in the development of a Specification Document and extends through the life of the Specification. A Participant shall make a Disclosure Statement as soon as practically possible during the development of the Specification Document and, at the latest within forty-five (45) business days after the Participant's Representative obtains actual knowledge of a Potential Claim relating to a Specification Document and in advance of any vote on the Specification Document. For a Participant's discovery of a Potential Claim subsequent to the adoption of the Specification Document, the Participant shall make a Disclosure Statement as soon as practically possible and, at the latest, within forty-five (45) business days after the Participant's Representative obtains actual knowledge of the Potential Claim. ATSC shall provide notice of the patent disclosure obligations to Members in technology group and membership letter ballots.
6. **Failure to Disclose Patents.** Any Participant that (a) does not disclose its refusal to license a Potential Claim pursuant to Section 1(c), or (b) fails to submit a Disclosure Statement concerning a Potential Claim in conformance with Sections 3, 4 and 5, shall be deemed to agree to license any resulting Essential Claim to other Members and Observers and any requesting third party under reasonable and nondiscriminatory terms and conditions and shall not be entitled to make an election under Section 1(c). Any Participant's knowing failure to disclose a Potential Claim, whether by violation or manipulation of the provisions of this Policy, shall be deemed incompatible with such Participant's obligations toward ATSC and shall constitute a "failure to disclose" with consequences as defined in this paragraph. ATSC may in such a case terminate any such Participant's ability to participate in ATSC processes.
7. **No Patent Search Required.** Section 3 does not require a Representative or Participant to perform or conduct patent searches. Knowledge of Potential Claims of a Participant shall not be automatically imputed to any Representative.
8. **No Responsibility for Identifying Patents.** The ATSC shall not be responsible for identifying Essential Claims or for conducting inquiries into the legal validity or scope of Potential Claims.
9. **Non-Member Participants.** Each technology group and specialist group shall use reasonable and consistent efforts, within the discretion of its chair, to ensure that any non-Member who participates in any ATSC activity agrees to be bound by this Patent Policy. In particular, chairs of groups may require non-Member Participants to (a) execute declarations of their intention to comply with this Patent Policy, (b) to require the companies they represent to execute such declarations, or (c) to take other steps to demonstrate their knowledge of and agreement to be bound by this Patent Policy. In addition, chairs of groups shall use reasonable efforts to state at the

commencement of meetings that this Patent Policy applies to all Members, Observers and non-Member Participants alike, and all email reflectors shall contain a similar message. Chairs of groups shall have the discretion to refuse input and contributions by non-Member Participants who refuse to comply with such measures.

10. **Claims in Documents Normatively Referenced.** Any patent or patent application with Essential Claims contained in a document that is normatively referenced by a Specification Document shall be subject to the disclosure requirements of this Policy. Any Participant that holds any Potential Claims in a document that is normatively referenced by a Specification Document shall make the submissions required by Sections 1 and 3 of this Policy as soon as commercially reasonable after a decision is made by a technical body to normatively reference the material on which the Potential Claims are based and in any event prior to a vote on the Specification Document at issue. No such requirements shall exist when the normatively referenced document is an ATSC document in respect of which the Participant has already made a disclosure pursuant to Section 1. No such requirements shall apply to references to materials contained in Specification Documents that are informative references rather than normative references. This section shall not imply any duty on the part of any technology group or specialist group to investigate the disclosure status of normatively referenced documents.
11. **Definitions.** Capitalized terms used herein shall have the meanings ascribed to them in this Section.
- a. **“Disclosure Statement”** means a written disclosure made pursuant to Sections 3 and 4.
  - b. **“Essential Claim”** means claims of all patents issued, and patent applications filed, under the laws of any country that are necessarily infringed by implementing the normative portion of a Specification Document. An Essential Claim is “necessarily infringed” only when there is no other technically reasonable non-infringing alternative for implementing a Specification Document.
  - c. **“Member”** means a voting member of the ATSC, or a voting member of a technology group, as defined in the ATSC Bylaws, or any member of a specialist group, as defined in the ATSC Bylaws.
  - d. **“Observer”** means an observing member of the ATSC or an observing member of a technology group, as defined in the ATSC Bylaws.
  - e. **“Participant”** means a Member, Observer, individual, or organization that participates in the development of a Specification Document within the ATSC, an ATSC technology group, or an ATSC specialist group.
  - f. **“Potential Claim”** means a claim in any patent issued or granted under the laws of any country, as well as a claim in, or supported by, any pending published patent application filed under the laws of any country, of which a Representative

of a Participant has actual personal knowledge and that, in the good faith judgment of such Participant's Representative, may be an Essential Claim.

- g. ***“Representative”*** means a person employed by a Participant who is authorized by such Participant to represent such Participant in connection with the work of the ATSC, a technology group, as defined in the ATSC Bylaws, or a specialist group, as defined in the ATSC Bylaws.
- h. ***“Specification Document”*** means an ATSC DTV Standard, an ATSC Recommended Practice, a Proposed Standard, a Proposed Recommended Practice, a Candidate Standard, or a Working Draft, as defined in the ATSC Bylaws.

## CERTIFICATE OF SERVICE

I, Mark S. Richer, President of the Advanced Television Systems Committee, Inc., certify that I have, on this April 27, 2009, caused to be delivered a copy of the foregoing Comments to the following individuals via the method indicated below:

John K. Hane  
Pillsbury Winthrop Shaw Pittman LLP  
2300 N Street, NW  
Washington, DC 20037  
*(via first class mail)*

Brendan Murray  
Media Bureau  
Federal Communications Commission  
Room 4-A737  
445 12 Street NW  
Washington, DC 20054  
*(via email: [Brendan.Murray@fcc.gov](mailto:Brendan.Murray@fcc.gov))*

A handwritten signature in black ink, appearing to read "Mark Richer", written on a light-colored background.

Mark S. Richer